

THE WITNESS: What accounts would fall in your category of "other accounts," Mr. Hall? I am trying to find out how inclusive the construction accounts are.

By MR. HALL:

Q. I have in mind all construction accounts whether for the purchase of material or construction work itself, if I make myself clear. **A.** What do you include in that? Do you include in that, for instance, the cost of designing the project and the various expenses of that sort?

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[7630] **THE WITNESS:** I assume the approvals were as you have stated but I do not recall the facts right at the moment.

By MR. HALL:

Q. Mr. Gunn, my question was based upon a resolution adopted September 27, 1905 by the executive committee. **A.** Did the resolution give the particulars?

Q. The exact words of the resolution were, "Resolved, that all accounts for engineering and construction work be subject to the approval of the chief engineer, and that all other accounts be subject to the approval of the president, [7631] vice president or executive committee." **A.** It sounds to me like a general division of the work. That is about the way it is today. Ordinarily when Penn Water and Power Company places a construction contract it is subject to the approval of the chief engineer.

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[7632] **By MR. HALL:**

Q. Mr. Gunn, Mr. Hutchinson, had general supervision and final authority over the work of Mr. Hugh L. Cooper, the manager of hydraulic construction, and Sanderson and Porter, Superintendent of electrical construction, isn't that so?

. . .

THE WITNESS: No, sir, I don't think that is correct.

By MR. HALL:

Q. What is your understanding? A. My understanding is that Hutchinson had certain authority over the quantity and quality of work which would be done, but his authority was not absolute at all, as is evidenced by McCall Ferry records in one and perhaps more than one instance where Hutchinson and Cooper got into [7633] a quarrel and it had to be arbitrated by the board of advisory engineers. I don't think Hutchinson had anything to say over the manner of executing the work, particularly in the case of Cooper. If he did it was very little.

Q. Wasn't the work subject to Hutchinson's approval?

A. Only the end result as regards quantity and quality.

Q. McCall Ferry had its own Secretary and Treasurer who were on the McCall Ferry payroll. Isn't that so?

A. Yes, I believe that is correct.

Q. McCall Ferry also had a board of advisory engineers to give advice on difficult engineering problems?

A. Yes, sir.

Q. The board of advisory engineers was headed by Wm. B. Parsons, as Chairman? A. Yes, sir.

Q. Do you recall that Mr. Parsons salary was twelve thousand dollars a year as Chairman of the Board of Advisory Engineers? A. No, I don't recall that. As a matter of fact, I don't know whether they worked on a retainer or salary.

Q. My information, Mr. Gunn, is based on the minutes of the executive committee of McCall Ferry Power Company, dated September 27, 1905, in which the Chairman of the Board of Engineers is listed as having a salary of twelve thousand [7634] dollars a year, and the chief engineer, who was Hutchinson, is listed as fourteen thousand dollars a year.

. . .

[7635] THE WITNESS: I have verified the amount paid to Mr. William Barclay Parsons and find it to have been twelve thousand dollars.

By MR. HALL:

Q. Who were the other members of the board of advisory engineers in addition to Parsons? A. Mr. Charles T. Main, Mr. F. O. Blackwell, and Mr. Hugh L. Cooper was a member for a time until he resigned to take over the construction or to submit a proposition for the actual construction of the project. Mr. Cary T. Hutchinson was the other member.

Q. Do you know whether or not those individuals that you have just named received a salary or retainer from McCall Ferry Power Company? A. No, I do not. I do not know offhand how they were compensated.

Q. Did Mr. Hutchinson participate in the deliberations of the board of advisory engineers and sign their reports? [7636] A. I am sure he participated in the deliberations. I don't know who signed their reports. I don't recall.

Q. As indicated on page 212 of Exhibit 27, Mr. Hutchinson signed the Hutchinson and Parsons' engineering report of 2-12-1905 [August 7, 1905], and also the report of the board of advisory engineers dated September 11, 1905, as indicated on page 216 [218] of Exhibit 27?

. . .

THE WITNESS: The report referred to as part 25 of Exhibit 26 [27] is not a report of the board of advisory engineers but it is rather a report to the board of directors signed by Cary T. Hutchinson as chief engineer of McCall Ferry Power Company. The report is made on the letterhead of Cary T. Hutchinson, consulting electrical engineer of New York City, and it is signed also by Wm. Barclay Parsons as consultant engineer and not as a member of the advisory committee.

The last paragraph of that letter states as follows, which indicates it is not an action of the advisory committee:

"Messrs. Hugh L. Cooper, F. O. Blackwell and Charles T. Main, and other members of your advisory

board, all of whom have been consulted either personally or by letter, concur in these recommendations."

That indicates to me it is not a report of the advisory board.

[7637] By MR. HALL:

Q. Before you proceed further, isn't it a fact that in the first paragraph of the report as shown on page 206 of Exhibit 27, it is stated, "This report is intended to give a general statement of the present status of the affairs of your company; the statements made and recommendations have the approval of every member of your advisory board of engineers, although owing to the absence from the city of three members, it is signed only by your chief engineer and consulting engineer."? A. That is right. I take that to mean that he had an informal discussion with them, but it is not an action of the advisory board, obviously.

Q. Did you want to complete your previous answer now? A. Yes, sir.

Q. If you had the three signatures on the report we have just been discussing would you consider it the report of the advisory board of engineers?

. . .

THE WITNESS: I have no special information. The signatures don't appear on there. I can speculate on what it might [7638] be if they did appear.

. . .

By MR. HALL:

Q. Did you finish your previous answer? [7639]
A. Referring now to part 25 of Exhibit 27, which was included in your previous question, that appears to be a report of the board of advisory engineers and is so headed, and it is a fact that it is signed by Wm. Barclay Parsons, Chairman, and signed also by Cary T. Hutchinson, Hugh L. Cooper, and F. O. Blackwell.

Q. Negotiations for the employment of the other members of the board of advisory engineers were conducted by Hutchinson long before they were elected. Isn't that so? A. I don't know whether or not they were. I don't recall at this date ever having seen any evidence that would indicate whether they were or weren't. They were undoubtedly all personal acquaintances of Hutchinson. They were four of the most prominent engineers in the United States and known to practically every engineer. But as to whether he entered into negotiations for their employment, I don't know.

[7640] Q. Did the McCall Ferry Power Company officers, or the board of advisory engineers address any of its reports to Harvey Fisk and Sons or to William M. Barnum? A. I don't know whether they did or not.

Q. Did you ever see a report addressed to Harvey Fisk and Sons or Barnum? A. No, I don't believe I ever saw any reports other than those that are in Exhibit 27. It seems to me those were all appropriately directed to the McCall Ferry Power Company.

Q. As a matter of fact, Mr. Gunn, the board of advisory engineers never reported to the Fisk firm but addressed their reports to Mr. Dimock or the executive committee, isn't that so? A. I don't know whether or not that is true. They may have made more reports than I have knowledge of.

Q. As to those about which you have knowledge isn't that the fact?

. . .

THE WITNESS: As to the pending question, yes, I think that is correct about those reports of which I have knowledge.

By Mr. HALL:

Q. Wasn't it upon the recommendation of the board of advisory engineers that Hugh L. Cooper was selected to take [7641] charge of the hydraulic construction? A. I

believe perhaps so, although I don't exactly recall the procedure. What happened was this: When the bids were taken from the group of construction companies who had been asked to quote, the construction companies included in their bids such high contingencies against the risk of construction that the board of advisory engineers concluded that McCall Ferry Power Company ought not to accept any of the bids but ought to make an arrangement with some reliable contractor to undertake the project on a cost-plus-a-fixed fee basis. After that conclusion had been reached Hugh L. Cooper resigned from the board of advisory engineers and submitted a proposition to McCall Ferry Power Company.

Whether that proposition was passed upon by the board of advisory engineers or not I don't recall, and if it was I wouldn't know whether that was the final approval or not.

Q. Cooper became manager of construction. That was his title. Is that right? A. Yes, sir, hydraulic construction that is.

Q. And the contract was actually negotiated by Dimock and Coffin, isn't that so?

THE WITNESS: You are referring to the contract with [7642] Hugh L. Cooper now?

By MR. HALL:

Q. Yes. A. I really don't know whether or not it was. I don't recall Coffin having been involved in it.

Q. Is it your understanding that Mr. Dimock negotiated that contract with Cooper? A. I just don't recall who negotiated with Cooper, but I had never heard of Mr. Coffin being in the negotiation on the Cooper contract. I distinctly don't recall that.

Q. Do I understand that you analyzed the minutes of the executive committee of McCall Ferry? A. I did when I was preparing Exhibit 26 over seven or eight years ago, yes. But I don't recall everything that was in all of them.

Q. Under Cooper's contract, which is Part 28 of Exhibit 27, didn't he have complete charge and responsibility for hydraulic construction as "hydraulic engineer" and "manager of construction"?

THE WITNESS: Mr. Cooper's responsibility under his contract to McCall Ferry Power Company seems to be defined in general terms in paragraph 10, page 223 of Exhibit 27 and reads as follows:

[7643] "1. The company agrees to employ and hereby does employ Cooper as 'hydraulic engineer' and 'manager of construction,' of the work at McCall Ferry, and Cooper agrees to serve in this capacity under the company and its officers, for the term of this agreement."

Does that answer your question?

By MR. HALL:

Q. Yes. In other words, Mr. Cooper served in his capacity as hydraulic engineer and manager of construction "under the direction of its officers"? **A.** Yes, under the direction of the company and the company's officers.

Q. Did Mr. Cooper furnish Mr. Value as engineer-in-charge and have the right to select the rest of the construction personnel? **A.** Yes, sir, I think that is correct.

Q. And Mr. Cooper was paid \$130,000 for his services, which included a completion bonus? **A.** The contract we have been discussing states the basis of Mr. Cooper's compensation on two alternative projects, one I believe at elevation 155 and the other, I believe, at elevation 185.

Neither one of those projects was actually built but rather a project to elevation 165 was constructed, and the original contract with Cooper did not contemplate tailrace [7644] excavation. Another complicating factor was that while Cooper did not completely finish the project as the contract called for at the date McCall Ferry got into financial difficulties, the work had progressed to a point where it was then obvious that he could have if there had been funds in time to earn the contract bonus.

At the termination of Cooper's services there was considerable squabbling, and I believe some threatened litigation, over the final settlement, and a compromise of all of those factors was reached. However, I don't know offhand what the total payment to Cooper was.

Q. Were not all plans and specifications and contracts for labor and material made by Cooper subject to the approval of Mr. Hutchinson whose decision was to be final?

A. I believe that is what the contract states, although the events proved Mr. Hutchinson's decision was not always final.

Q. What events do you refer to, Mr. Gunn? A. I refer to the controversy that Cooper and Hutchinson had over the proper location for the dam which was finally arbitrated by the board of advisory engineers, at least, and I don't know who else, perhaps Fisk. Then there was another instance; I believe Cooper and Hutchinson got into a squabble over the quality of the concrete, and that also had to be arbitrated at least by the board of advisory [7645] engineers, I believe. It is my conclusion from a general study of the records of McCall Ferry Power Company that Hutchinson had a great deal of difficulty making any of his prerogatives stick with Mr. Cooper.

Q. Is there any suggestion in Cooper's contract, which is Part 28 of Exhibit 27, that his duties under that contract were in anywise subject to the supervision, approval or control of the Fisk firm or Barnum?

THE WITNESS: Yes, sir.

By MR. HALL:

Q. What is it? A. The fact that the contract is with McCall Ferry Power Company and Mr. Fisk controlled that enterprise.

Q. Do you know of any reports regarding the construction of the project Mr. Cooper ever submitted to the Fisk firm or to William M. Barnum? A. No, I do not. As a

matter of fact, I do not have, at least I don't recall having seen, very many reports by Cooper himself submitted to anybody.

Q. As a matter of fact, Cooper reported solely to the [7646] McCall Ferry officers and executive committee. Isn't that so? A. I don't know about that. The contract says he is working under their direction.

Q. Wasn't it on the recommendation of the board of advisory engineers that Sanderson and Porter were selected to take active charge of the electrical construction? A. I don't recall who made the final recommendation on the selection of Sanderson and Porter. It is a fact they did serve in the capacity of superintendent of electrical construction, and they also kept the books on a cost-plus basis, if I recall.

Q. The contract with Sanderson and Porter was negotiated by Dimock and Mr. Coffin. Isn't that so? A. I don't know. I never was aware Mr. Coffin was in the negotiations.

Q. Sanderson and Porter served as superintendent of electrical construction under the McCall Ferry Company and its officers, right? A. They served as superintendent of construction and—

Q. Electrical construction. A. —bookkeepers, as I understand it. Yes, I meant electrical construction.

Q. Under the agreement which Sanderson and Porter had which is Part 29 of Exhibit 27, everything that firm was to do and all of its duties assigned to it under the agreement [7647] were subject to the approval of McCall Ferry's chief engineer and were executed under his direction and his decision was to be final. Right? A. Yes, the agreement so states in Article 3 which appears on page 228 of Exhibit 27. However, I would rather doubt whether that was intended to extend to their bookkeeping function.

Q. How much were Sanderson and Porter to receive for their services under their contract? A. \$50,000.

Q. Do you know of any reports regarding the construction work Sanderson and Porter ever addressed to

Harvey Fisk and Sons or William M. Barnum? A. No, I don't recall offhand having seen any sort of report from Sanderson and Porter to anybody.

Q. Did Mr. Barnum or Harvey Fisk and Sons pay for the services of any of the McCall Ferry officers or construction managers? A. Not so far as I know.

Q. How did Mr. Barnum exercise his management control? A. I don't know, unless it was through the prestige of the Fisk firm.

Q. How did Mr. Barnum communicate his orders? A. I don't know.

Q. Have you ever seen any orders or communications in [7648] connection with the management or construction of the McCall Ferry project issued by Harvey Fisk and Sons or Mr. Barnum to the McCall Ferry officers or construction managers? A. By that you mean formal instructions in writing, Mr. Hall?

Q. Yes. A. No, I can't say that I ever have. I have seen, as I recall it, we discussed some correspondence by Simpson, Thacher and Bartlett which appeared to be flowing from Fisk's firm. But as to direct orders I don't recall ever having seen any.

Q. Are you now referring to the inquiry of Simpson, Thacher and Bartlett to Mr. Hutchinson regarding the selection of the board of directors of McCall Ferry? A. That was one instance. I believe there was another instance of some instructions about the handling of stock. Those are the two that I recall offhand. I don't know whether there are any more in the files or not, but I don't recall them.

Q. Does your answer include informal orders or recommendations, also? A. No, sir.

Q. You say it does not? A. No, it does not. I don't know whether there were informal orders or recommendations or not, and I wouldn't [7649] expect to find any evidence of them. I take it now we are speaking of Fisk's management function only.

Q. That is right. A. Yes.

Q. Just what did Harvey Fisk and Sons and Mr. Barnum do to supervise the construction of the project as you claim?

A. All I know specifically as to what they did is what Mr. Fisk states in his affidavit and such other scraps of evidence as are apparent from the records. I have no comprehensive catalog of what they did.

[7650] Q. What was the primary responsibility of Harvey Fisk and Sons for supervising the construction of the project, the selection of personnel, and the selection of experts, engineers, and contractors.

THE WITNESS: Primary responsibility, as far as I know, and I would take that to mean the final right to say we will or we will not select this man or that man or some other man.

By MR. HALL:

Q. Wouldn't final right be stated as the ultimate responsibility? A. I think that would be a proper expression of it.

Q. Then what does "primary responsibility" mean? A. Same thing as ultimate responsibility.

Q. What other electric companies had Mr. Barnum managed? A. I don't know all of them. I never attempted to find out. But Fisk's firm, as I understand it, while Barnum was connected with it, I believe were the originators of Electric Bond and Share, Electric Securities Corporation, the Hudson-Manhattan Transfer, which was an Electric Railroad, and a large number of industrial corporations. I think those are the ones with which they were connected as I recall it which were in the electrical field.

Q. Did any of the companies you have mentioned do [7651] electrical construction work while Fisk's firm was connected with them? A. Hudson and Manhattan did, unquestionably. I don't know how long Fisk's connection with Electric Bond and Share lasted, or whether at that time they actually did any construction or not.

Q. Mr. Gunn, isn't it your understanding that Electric Bond and Share Company was created by General Electric? A. Not if I understand your word "created."

Q. What did you understand my word to mean? A. Organize.

Q. That is what I meant. A. It is my understanding that Fisk's firm was one of the primary banking houses, at least, in its organization. I am relying on my recollection for that.

It was also my understanding that Fisk's firm was the primary banking house in the organization of Electric Securities Corporation.

I am aware, of course, that both of them were or became subsidiaries, or were affiliated with General Electric Company.

Q. They were owned by General Electric. Isn't that so? A. I think they may have been. At least they became owned by General Electric. I don't know just what the arrangement was in the beginning, but my recollection is that Mr. Fisk was in the picture in a big way.

[7652] Q. Did the Fisk firm supervise and manage any hydro-electric construction for the three firms which you mentioned? A. Not so far as I know.

Q. What part did Mr. Barnum play in connection with Fisk's relationship to those companies? A. I don't know except it is my understanding Mr. Barnum was a member of the Fisk firm at that time. I don't know just what his part was.

Q. What management problems were settled by Mr. Barnum? A. I suppose all the management problems were during Fisk's control of the McCall Ferry enterprise. I take it we are talking about McCall Ferry now.

Q. Yes. That is just a supposition upon your part, isn't it, Mr. Gunn? A. No, Mr. Fisk says he managed it and he managed it through Barnum.

Q. Do you know of any specific problem which was presented to Mr. Barnum for settlement? A. No, sir,

I was not there and never could find the records of the Fisk firm.

Q. Did Mr. Fisk name any? A. No specific problems other than the ones he enumerated on page 72 of Exhibit 27.

Q. Did Mr. Barnum negotiate any contracts for McCall Ferry? [7653] A. I don't believe I can answer that, Mr. Hall, without knowing just what the scope of your term "negotiate" is.

Q. Did he arrange for the execution of any contracts for McCall Ferry? A. I don't know whether he did or not.

Q. What persons did Mr. Barnum hire for the McCall project? A. I don't know other than Mr. Fisk says it was his responsibility for the selection of personnel, selection of experts, engineers, contractors, and so forth. That is all I know about it.

Q. Was Mr. Barnum an engineer? A. No, sir, Mr. Barnum was a banker and a lawyer as I understand it.

Q. What engineering problems were settled by Mr. Barnum? A. By whom?

Q. By Mr. Barnum? A. I don't know of any specific engineering problems settled by him.

Q. Did Mr. Barnum purchase any materials for the McCall project? A. I rather doubt that he did. I didn't understand him to be the purchasing agent, also.

Q. Did Mr. Barnum prepare any plans and specifications [7654] for the McCall Ferry project? A. I doubt that. I don't think he did.

Q. How much of Mr. Barnum's time was devoted to the management of the McCall Company? A. I don't know, other than what Mr. Fisk states in his affidavit on page 72 of Exhibit 27, which reads as follows:

"Mr. William M. Barnum, one of my principal partners, as I have pointed out, devoted a very considerable portion of his time to this project and was, in fact, in active charge of and had full responsibility for the entire project."

Q. What did Mr. Fisk mean by "considerable time"?
A. Considerable time, I suppose.

Q. Did you ask Mr. Fisk how much time Mr. Barnum spent in connection with the management of the McCall Ferry project?
A. No, sir, because when he said "considerable," I assumed he lost his time cards with the rest of the Fisk records.

Q. How much time did Mr. Barnum spend at McCall Ferry?
A. I don't know.

Q. Was Mr. Barnum ever there?
A. I think he was probably, but I wasn't, so I don't know.

Q. When did Mr. Barnum leave Harvey Fisk and Sons?
[7655] A. In July of 1908.

Q. Wasn't Barnum paid by Harvey Fisk and Sons for his services to that firm?
A. What do you mean by "that firm"? Harvey Fisk and Sons or McCall Ferry?

Q. Fisk?
A. Yes, he was a partner of the firm. Harvey Fisk says he had fifteen per cent interest in the firm.

Q. There were fourteen other directors of the McCall Ferry Power Company besides Barnum? Right?
A. Yes, sir, there were fourteen other directors elected on August 8, 1905, at least.

Q. And there were four other members of the executive committee of the McCall Company in addition to Barnum. Isn't that so?
A. Yes, sir.

Q. Isn't it a fact, Mr. Gunn, that Barnum had no more responsibility than any other member of the executive committee?
A. I don't think that is a fact.

Q. Why not?
A. Because Fisk says he managed the enterprise through Barnum.

Q. Did Mr. Barnum have more than one vote?
A. I don't think he had more than one vote, but I never [7656] made the assumption Fisk controlled McCall Ferry project through the executive committee. But if he did control it through Barnum then obviously Barnum had more responsibility for the project than did the other members of the executive committee.

Q. Does Mr. Fisk say that the Fisk firm controlled McCall Ferry through Barnum or managed it through Barnum? A. I take that to be one and the same thing. I think he says at one place, I believe, that he controlled the project, and in another point he says he managed it through Barnum. I take that to be one and the same thing.

Q. Through what medium did the Fisk firm exercise their control over the McCall Ferry? A. I don't know, except through their prestige as bankers.

TRIAL EXAMINER: Could Mr. Fisk have in mind financial management rather than general overall management?

THE WITNESS: I don't think he could, Mr. Examiner, because it goes ahead and enumerates under the management the selection of personnel, the selection of experts, and selection of contractors, which would seem to me to be going beyond the mere function of management in connection with the raising of money.

By MR. HALL:

Q. Do you have any reason to believe that all the [7657] members of the executive committee of McCall Ferry or the board of directors did not take part in the discussion and formulation of policies?

THE WITNESS: No, I have no reason to believe they all did not take part in the discussions and in the management. I merely believe Fisk had control of the management of the McCall Ferry enterprise.

By MR. HALL:

Q. Do you have any reason to believe that the members of the executive committee or the board of directors did not vote their independent judgments with respect to management policies? A. I really don't know what they did. The only thing I know is what Mr. Fisk says, that

he controlled the project. How he controlled it I really do not know.

Q. Isn't it a fact that Mr. Barnum was seldom selected by the executive committee to look into any of the McCall Ferry Power Company's management problems? A. No, I don't know that that is a fact.

Q. Wasn't that indicated by your review of the correspondence and the minutes of the executive committee? A. No, I shouldn't say that it was. I might speculate on it but it didn't indicate that to me. As a matter of fact, [7658] with Mr. Barnum representing the control of the enterprise it wouldn't be expected he would be assigned to detail work. He merely passed judgment on what detail work other people did.

Q. Where is it indicated that Mr. Barnum actually passed judgment? A. In Mr. Fisk's statement that he controlled the enterprise through Mr. Barnum and in Hutchinson's statement that Fisk took control of the enterprise, and in the numerous other indications we have discussed in the past few days.

Q. Does Mr. Hutchinson say Barnum managed the enterprise? A. No, it says Fisk took control of it. Fisk says Barnum managed the enterprise.

Q. Didn't your study establish the fact that Mr. Dimock, the president, and his assistant, Mr. Kirkland, vice president and general manager, and Mr. Hutchinson, the chief engineer, actually managed the McCall Ferry Power Company? A. No, sir, it did not.

Q. Didn't the records indicate they were the ones who carried on the active management and made the decisions and so forth? A. No, sir. The record indicated they made certain decisions, but there was no indication in the record to me they made the decisions of the type Fisk says Barnum was responsible for.

[7659] Q. Isn't it a fact that the engineering problems were referred to Mr. Hutchinson and the board of advisory engineers? A. They considered them but I presume the

important ones went beyond them, the important problems went beyond those two agencies.

Q. Do you know of any important problems which went beyond Mr. Hutchinson or the board of advisory engineers? A. Well, I don't have any proof of the problem going beyond them but I would certainly expect the controversy between Hutchinson and Cooper over the location of the dam probably went beyond them. Certainly the purchase of Harlow-McGaw's property went beyond them direct to Fisk.

Q. How many directors meetings did McCall Ferry have? A. I don't recall.

Q. Was it about twelve? A. I really don't recall.

Q. But you do know that Barnum was hardly ever in attendance at those meetings, isn't that so? A. No, I don't know that. I don't recall that, either. If he did not attend directly it would seem to indicate the board of directors were not the medium of control for the enterprise.

Q. Would you say that about the executive committee meetings, also? A. I think it might be said about those as well.

[7660] Q. In other words, Mr. Barnum's attendance at the meetings of the executive committee is something which should be taken into account? A. Taken into account for what?

Q. In determining the exercise of management and the medium through which it was exercised by the Fisk firm. A. No, I don't think it would have any particular significance as to that whether he did or whether he did not.

Q. Did Barnum exercise his management as a member of the board of directors, executive committee, or what? A. I don't know.

Q. When Mr. Barnum didn't attend the meetings of the executive committee or the board of directors how did he exercise his managerial authority? A. I don't know.

It very well may be that the decision was agreed upon before the meeting. I have heard of such things being done.

Q. Do you know whether it was done in connection with the McCall Ferry project? A. No, sir, I do not.

Q. Can you point to the minutes of any of the executive committee meetings which show the exercise by Barnum of managerial discretion or authority? A. I don't recall the contents of all the minutes and therefore I do not recall whether there would be any showing [7661] of that to be found in the minutes or not. I have not reviewed them in seven or eight years.

Q. When was the Fisk firm paid for management services? A. About June of 1905 when the agreement was reached to give them the stock compensation that they received. I suppose that would be the date you refer to.

Q. Was the management fee supposed to cover the completion of the project? A. That is my understanding. It seems to me to be a proper conclusion.

Q. Is it customary to pay a fee years in advance of rendering the service as you claim was done in this case?

[7662] A. I don't know. I am not an expert in that field. It is my understanding it was frequently done in the way it was done in the McCall Ferry project in those days. I don't know what the present custom is.

Q. What cost did Harvey Fisk and Sons incur in allegedly managing the McCall Ferry Power Company? A. I don't know.

Q. What costs did the Fisk firm incur in connection with financing services related to McCall Ferry Power Company? A. I don't know.

Q. As a matter of fact, I take it you have no evidence of any costs? A. I have no evidence of any costs whatever. We never found the Fisk records and therefore I just haven't the slightest idea as to what costs they incurred for either one of those functions.

TRIAL EXAMINER: Do you know the date when these records were destroyed?

THE WITNESS: I believe it was prior to 1924 which, as I recall it, was about the time of Mr. Fisk's retirement from the firm.

TRIAL EXAMINER: Were you given any details as to what occasioned the destruction of the firm records?

THE WITNESS: No, I wasn't. Mr. Fisk did not know. His assumption was that the occasion of it was the liquidation [7663] of his partnership to relieve themselves of any further storage expense. I might add to that that the records we are speaking of now are the detail records. Certain of the records relating to financing, that is such things as prospectae and underwriting agreements and things of that sort, and numerous other financial records, were given by Mr. Fisk to Princeton University and became the foundation data for the Pliny Fisk Library at Princeton.

. . .

[7664] By Mr. Hall:

Q. How did Mr. Fisk determine the value of Barnum's management services? A. I don't believe I understand your question, Mr. Hall. Are you asking me how he reached the conclusion they were the amount as stated in Part 9 of Exhibit 27?

Q. Yes. A. I don't know other than to consider the facts he had before him and to consider the amount of Barnum's interest in his firm which he states to have been about 15 per cent and to have averaged \$115,000 a year. I suppose he took all of those facts into consideration and arrived at the conclusion they were what he said they are. I certainly don't know what his mental process would have been.

[7665] Q. Do you think the value of Mr. Barnum's services, if he actually had been active manager for McCall Ferry, should be determined by the profits and income of

the Fisk firm from its banking business? A. I don't know. It would seem to me that would be one of the indications of Mr. Barnum's worth. I don't know just how it would be used to assist Mr. Fisk in reaching his conclusion. As I said, I don't know what the man's mental process was.

Q. Was Mr. Barnum's share of the profits of Harvey Fisk and Sons reduced by reason of his alleged management of the McCall Ferry Power Company? A. I don't know.

Q. How much did Mr. Fisk estimate his firm's alleged management services were worth? A. \$150,000.

By MR. HALL:

Q. How much have you claimed in your original cost determination for these alleged management services?

A. The amount claimed for management services was [7666] \$199,570.31 which was the result of the selection of \$25 per share as the cash value of McCall Ferry Power Company common stock to be used in computing the value of all services. It is stated on page 53 of Exhibit 26.

Q. In other words, you claim approximately \$49,000 more than Pliny Fisk estimated his firm's services to be worth, right? A. Yes, in the case of Fisk's services there was more claimed than in the case of others. The use of \$25 a share resulted in reducing other claims as to the value of services.

Q. Do you have any evidence to show that Harvey Fisk and Sons actually received 17,537½ shares of common and 1875 shares of preferred stock? A. The only evidence I have is what we have discussed for the last several days.

Q. I am speaking now of management services.

THE WITNESS: The evidence we have been discussing for the last several days was as to the total amount of

compensation Fisk received. The amounts of stock you mentioned, Mr. Hall, were received by Fisk for both management and [7667] banking services.

To answer more directly I have no evidence that the number of shares you mentioned were given to Fisk for management services alone. I don't believe they were.

By MR. HALL:

Q. And you have no evidence to show the split for the purposes of determining banking services and management services? A. I have the evidence contained in Mr. Fisk's affidavit.

Q. But even Pliny Fisk claims only that his firm received at least as many shares as Bertron, Storrs and Griscom. Isn't that so? A. No, that is not all he claims, as I recall it.

Q. Will you refer to page 79 of Exhibit 27, specifically to paragraph 10? A. Yes, sir. Paragraph 10 reads as follows—

MR. KING: Just a minute. If Your Honor please, I object to that question. I think, as a matter of fact, paragraph 10 has been read into the record verbatim at a prior time in this hearing.

. . .

[7668] MR. KING: I didn't object to reading it into the record. I objected to further questions relating to paragraph 10 on page 79 of Exhibit 27 as being repetitive.

TRIAL EXAMINER: Overruled.

. . .

THE WITNESS: Mr. Examiner, I can not state what Fisk says in paragraph 10 any more precisely than paragraph 10 states it.

TRIAL EXAMINER: Very well. That is your answer.

By MR. HALL:

Q. But on the basis of your information Bertron, Storrs & Griscom received only 7,462½ shares of common stock, right?

MR. KING: If Your Honor please, I object to that. We have been into that before many times.

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[7669] TRIAL EXAMINER: Objection sustained.

By MR. HALL:

Q. Did you find any contract whereby the McCall Ferry Power Company or Susquehanna Contracting Company agreed to pay Harvey Fisk and Sons for banking services?

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THE WITNESS: No, I don't recall having found any contract covering banking services.

[7670] Q. Did you find any evidence in the records that you examined that the payment of a cash commission for banking services was considered by McCall Ferry or Susquehanna Contracting Company? A. No, sir. I think the books of McCall Ferry Power Company, and Susquehanna Contracting Company account for the proceeds of the cash which came into McCall Ferry's hands without there being any available to pay banking services.

Was that an answer to your question?

Q. I think so.

Did you find in the records any valuation of Harvey Fisk and Sons' banking services? A. You mean in McCall Ferry Power Company or Susquehanna Contracting Company?

Q. Or any place. A. No, nothing except Mr. Fisk's statement in his affidavit.

Q. Did you find any evidence of negotiations with Harvey Fisk and Sons for the payment of their services? A.

Speaking now of banking or management or both? The answer will be the same, no, I didn't find any.

May I have that last question and answer read, please?

(Question and answer read.)

THE WITNESS: I think I will have to modify that. There was evidence, as we have already discussed, of the payment of [7671] banking services, in the exchange of correspondence between Bertron and Lee, Higginson.

Q. You are referring now to correspondence related to part 11 of Exhibit 27? **A.** Yes, sir.

Q. That refers only to compensation of Lee, Higginson and Company? **A.** That particular correspondence in part 11 refers only to the compensation of Lee, Higginson and Company. However, the records of Bertron, Storrs and Griscom, which are part 22 of Exhibit 27, show common stock which was compensation to Bertron, Storrs and Griscom for banking services.

Q. What functions were performed by those interested in the financing? **A.** They varied, depending upon the person to whom you refer as those interested in financing.

Q. The bankers who secured bond subscriptions? **A.** I think you will have to be a little more specific. Are you referring to Lee, Higginson?

Q. I am referring to all the bankers. **A.** I don't know who you are talking about, then. For example, do you count Lee, Higginson a banker?

Q. Yes. **A.** Well, services performed by Lee, Higginson, so far [7672] as I know, were those of raising the necessary funds to construct the project.

Q. What did Harvey Fisk and Sons' banking services consist of?

. . .

[7673] **THE WITNESS:** So far as I know they consisted of raising the necessary funds to construct the McCall Ferry project.

By MR. HALL:

Q. Do you know anything about the time and money of Harvey Fisk and Sons which went into the banking services of that firm? A. No, sir. As I told you, we never found Harvey Fisk and Sons' records and there is no conceivable way for me to know what expense they incurred either for banking, management, or anything else in connection with McCall Ferry.

Q. Did you ask Fisk for that information? A. Certainly, I asked him for his records and he said they were long since destroyed.

Q. Did you ask Mr. Fisk what costs were incurred by the Fisk firm and what time was expended by that firm in connection with its banking services? A. I don't think I asked him that because I wouldn't expect a man to remember his cost books for that length of time, at least the contents of his cost books.

Q. Don't you think Mr. Fisk would have been able to tell you whether it took them a month or two months? A. Are you referring now to time or cost?

Q. I am referring now to time. A. As to how long—the time for what?

[7674] Q. The banking services. A. You mean by that the length of time that Fisk's firm required to obtain the subscriptions they did?

Q. Yes. A. No, I don't recall having asked him that specific question, but it seems to me that the records indicate, the records contained in Exhibit 27 give you, some indication of that.

Q. What indication did those records give you? A. They indicate to me that Fisk took control of the McCall Ferry enterprise some time between the 15th of March and the 25th, and by the latter part of June the necessary subscriptions had been obtained. So I would say that the banking services, as they related to raising the money, lay within those dates.

. . .

Q. Do you recall when the first 20 per cent call was made from the bond subscribers?

THE WITNESS: June 1, 1905.

By MR. HALL:

Q. Was that the first call made to the subscribers for [7675] the initial 20 per cent advance?

THE WITNESS: My answer should have been May 15, 1905.

By MR. HALL:

Q. As of that date or as of a date shortly prior thereto all of the bond subscriptions had been obtained; right?

A. Yes, sir, that is correct.

[7681] MR. HALL: Mr. Examiner, I offer Exhibit Number 173 for identification. This exhibit consists of two pages, was written by Gardiner M. Lane, and appears to be a memorandum or letter addressed to prospective subscribers of Lee, Higginson and Company, and further appears to have been written subsequent to the time that Harvey Fisk and Sons came into the picture. This was taken from the McCall Ferry Power Company file number 112.

(The document referred to was marked Exhibit Number 173 for Identification.)

By MR. HALL:

Q. Mr. Gunn, are you familiar with this particular document? A. I think I recall having seen it some time in the past.

Q. Was this one of the documents you obtained from the files of Lee, Higginson and Company? A. It appears to have been. I believe that was my only [7682] source of it.

MR. HALL: * * * May we have marked for identification, Mr. Examiner, as Exhibit 174, a document dated July 19, [10] 1907, taken from the Lee, Higginson and Company file, otherwise identified as McCall Ferry Power Company file number 112?

* * *

(The document referred to was marked Exhibit Number 174 for Identification.)

By MR. HALL:

Q. Is this another one of the documents you obtained from the records of Lee, Higginson and Company, Mr. Gunn? A. Yes, sir, it appears to be. That would have been our only source of this document. It appears to me to be a letter written in an attempt to sell McCall Ferry financing to some of Lee, Higginson's prospective customers.

MR. KING: Respondent counsel acknowledges receipt of Exhibits 173 and 174.

MR. HALL: This Exhibit 174 for identification is not all of the letter but the parts pertinent to what we have been discussing this afternoon. In other words, this is an [7683] excerpt from the Lee, Higginson and Company letter.

MR. KING: May I have staff counsel's statement, please?

(Staff counsel's statement read.)

MR. KING: Mr. Hall, on page 2 of the exhibit for identification number 174, do the asterisks indicate the omissions?

MR. HALL: Yes, where omissions were made.

* * *

[7685] MR. KING: Mr. Examiner, some days ago Mr. Hall asked me to produce the Lee, Higginson and Com-

pany participation. I now hand it to him with the statement that that is the only copy we have and would like to get it back as soon as possible.

. . .

[7686] By Mr. HALL:

Q. Mr. Gunn, was the Lee, Higginson and Company participation submitted to Mr. Lee prior to the date of his affidavit contained in part 8 of Exhibit 27? A. Yes, sir. The participation as you have it was submitted to him prior to the date of his statement and, as you notice, a considerable number of parts of the participation came from Lee, Higginson's file. Most, if not all, of the documents contained in the participation had at various times been made available to Mr. Lee before the participation in the form in which you now have it was formally prepared and given to him.

Q. Was this complete participation submitted to Lee [7687] prior to the date of his affidavit? A. Yes, sir.

Q. Is this the final participation? A. Yes, sir.

Q. Did you say there were other drafts submitted to Mr. Lee before this final draft was prepared? A. Yes, I believe that is correct. I believe the first time I saw Mr. Lee I submitted to him a preliminary draft for his comments, and the draft you now have is the final form incorporating his comments.

Q. Do you have the preliminary draft you submitted to Mr. Lee? A. No.

Q. What caused you to change the preliminary draft? A. Some minor suggestions Mr. Lee made. I don't recall what they were. That suggestion that he made plus, I believe, perhaps some of the information we found in his files later, at least which he made available to us from his files.

. . .